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ABSTRACT

In 2002 the Supreme Court decided that tuition vouchers for private and religious schools do not violate the First Amendment's establishment clause. With "Zelman v. Simmons-Harris," the case in question, the Court put the school-choice debate back in the political arena, where it belongs, according to this position paper/policy brief. The brief postulates principles that policymakers must incorporate into any choice proposals in the wake of the "Zelman" decision. The brief points out that vouchers are only a funding mechanism, not an instructional change, and introduces two important principles: (1) Vouchers have no direct connection with teaching, curriculum, or other in-school factors that influence student learning; and (2) parents and the general public have a compelling interest in at least basic student learning. The paper goes on to present arguments in favor of accountable choice and concludes that the "Zelman" decision can serve either as another milestone in an unproductive debate over school choice or as a catalyst for rethinking choice and accountability in public education. (Contains 29 endnotes, many of which include references.) (WFA)

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July 2002

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PROGRESSIVE POLICY INSTITUTE

Policy Brief
July 2002

Putting Vouchers in Perspective

Thinking About School Choice after Zelman v. Simmons-Harris

by Andrew J. Rotherham

With its June 27 ruling that tuition vouchers for private and religious schools do not violate the First Amendment's establishment clause, the Supreme Court has put the school choice debate back where it belongs: in the political arena.[1] This is a welcome development because the basic problems with vouchers have little to do with church-state issues; rather, they raise organizational questions about American public education that should be decided through a political rather than legal process.

PPI has long advocated enhanced public school choice, public charter schools, and other public choice options, but at the same time has opposed using public monies to fund vouchers for schools that operate without public accountability and admissions.[2] Consistent with that history, this policy brief describes the principles that policymakers must incorporate into any choice proposal in the wake of the *Zelman v. Simmons-Harris* decision to formulate a Third Way that expands choice only while guaranteeing access, quality, and standards in public education. Under this "accountable choice" model, public accountability, as well as funding, follows students into new or existing schools of choice—whether operated by government, private, or parochial authorities. But, these schools remain public in the most critical sense—public results and accountability in exchange for public funding.

Although the term became politicized during the school choice wars of the 1980s and 1990s, a school "voucher" is merely a way of funding schools not a "stand-alone" education reform strategy. As a general rule, public schools and school districts are now funded as institutions based on their enrollment and other factors including poverty and students with special needs. In a voucher system, funding is instead allocated to individuals who then choose where to spend it. The amount of the voucher and the range of choices (private or sectarian schools) vary depending on the rules and laws governing the particular voucher plan.

The assumption that underlies much of the support for vouchers is that increasing freedom of choice by parents will introduce competitive forces and drive improvements in all schools. The evidence is preliminary and mixed with regard to system-wide change in the three public voucher experiments in Wisconsin, Florida, and Ohio, and also with regard to public charter schools. However, there is reason to believe that competition is one factor than can help improve schooling.[3]

Nevertheless, because vouchers are only a funding mechanism rather than an instructional change, it is important to consider two important principles when thinking about school choice:

- Vouchers have no *direct* connection with teaching, curriculum, or other in-school factors that influence student learning; and

- Parents, and the general public, have a compelling interest in at least basic student learning.

The constitutional issues that the Supreme Court weighed, while important legal issues with regard to church-state considerations, have little to do with these principles. Vouchers impact student learning only to the extent that parents make good or bad choices about where to use them; in and of themselves, vouchers have no direct cause and effect relationship with learning.[4]

Unfortunately, in their zeal to defeat choice proposals, anti-voucher advocates attached such

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great significance to constitutionality that education policy considerations are largely obscured in the public debate about the court's ruling. The court ruled that the Cleveland, Ohio voucher system, and by extension similar programs, do not run afoul of the establishment clause.[5] Despite much of the rhetoric, the ruling was not a proxy on whether or not vouchers are an efficacious policy option and the *Zelman* decision does not point to policy solutions by itself. Questions about how to design a workable choice system, regardless of the range of schools involved, are largely legislative rather than judicial issues.

In the wake of *Zelman* and the ensuing attention to choice, three scenarios are likely, none of which will bring about significant improvements in American education.

First, there is an obvious enticement to increase the number of small public and private pilot voucher programs around the country. While these programs might help a small number of parents and students, they distract from larger reform issues and are, at best, short-term fixes for a small number of students. There is a cynical quality to these initiatives because they carry an implicit assumption that not every child can be helped, are frequently divorced from other school improvement efforts, and do not alter the fundamental educational arrangements in low-income communities.

Second, some policymakers and voucher advocates will seek to cobble together plans to dramatically increase education spending while simultaneously piloting voucher programs. Such an approach, to increase education spending with no apparent purpose other than to make vouchers more attractive and with no linkage to improved student performance other than wishful thinking, misses the point. It marries two ideas—vouchers and generic increases in education spending—that would likely be rejected independent of one another and creates a public policy Frankenstein unlikely to drive fundamental change.[6]

Third, it is possible that the Supreme Court's ruling will not alter the political landscape with regard to choice enough to bring about any resolution and pro- and anti-voucher combatants will simply continue their phony war over school choice. This would perpetuate the distracting debate in which voucher opponents and proponents alike dodge tough issues like improving fiscal equity, addressing teacher quality, improving pre-kindergarten education, and refining standards and accountability systems. Instead, powerful interests on both sides continue to fight over vouchers with no resolution and little attention to other pressing problems.[7]

There is a better option. The focus on choice resulting from the *Zelman* decision gives policymakers the chance to move past this tired debate and fundamentally rethink the funding and accountability arrangements for schools, and take real steps to improve and modernize the organization of public education around a new model of public schools based on the concept PPI calls "accountable choice." In this paradigm, a public school is not defined by who runs it, but rather by two features: universal access and accountability to the public for results. It doesn't matter whether a local school board, a group of parents, a teachers' union, a Fortune 500 company, or a church runs a public school. What matters are results in student learning and ensuring that schools receiving public monies abide by performance contracts and non-discrimination laws in exchange for this public money.[8]

This concept of equal access for students and accountability for learning should be the crux of any effort to expand choice in the post-*Zelman* environment. Policymakers should reject the pseudo-centrism of "spending in exchange for vouchers" initiatives and the cynicism of voucher pilot programs. Instead, reform-oriented policymakers should embrace a bold strategy to make chartering, contracting, and real public school choice the norm while ensuring that all publicly funded schools are held to high standards of accountability. Choice for its own sake is a hollow education reform because it is not tied to student learning. Choice coupled with accountability, essentially a radical universal choice model, is a strategy with the potential to unleash a renaissance in American education because it is a model applicable in all communities for all types of schools based on parental demand and public accountability.

In fact, more universal choice with accountability would obviate the need for small

means-tested programs by providing richer conditions for various educational options to flourish. However, and fortuitously for those students most in need, if early experience with charter schools is any indication, it is likely that the market for new schools and options will mostly be in communities currently underserved by their public schools.

An accountable choice system would guarantee:

- Full per-pupil funding augmented for poverty and disability that would follow students so parents are empowered with real choices and the conditions for new schools to open and operate are created;
- Equal access protections so schools accepting publicly funded students must accept *all* students, space permitting, and conduct a blind admissions process if oversubscribed; and
- Accountability for common student learning and performance goals applying to all schools serving students with public funding regardless of governance.

Many voucher proponents will decry access and accountability provisions as "strings" or unwarranted intrusion into the operations of private schools. Likewise, many voucher opponents will resist this model because they fundamentally object to the idea of greater choice, even public school choice and charter schools. In fact, these principles move the debate past a frequently meaningless delineation of public- and private-based ownership to a new definition of "publicness" predicated on operating principles and performance rather than ownership or governance.[9] This shifts the focus of the school choice debate to the avowed goal of both sides: improving education for the neediest students. There are tremendous disparities in school quality within the public and private sectors particularly in low-income communities. Thus, the challenge for policymakers is to increase good educational options in distressed communities, not simply to move students into "private" schools.

As this paper argues, however, these accountability measures should be modest. As they resist demands from voucher proponents to eliminate regulation, policymakers must also resist pressure from choice opponents to make accountability requirements so cumbersome that they thwart the creation of new schools or expansion of existing choice options. But, even with minimal requirements about open admissions and student performance, some schools will understandably elect not to accept publicly funded students under such a system. In fact, it is the very marketplace forces that choice proponents seek that will determine whether schools elect to compete for publicly funded students. "Private" schooling options should remain open to parents who seek them. Rather than forcibly compel schools to change their admissions and operating procedures, the policy goal should be to lay out a set of minimal ground rules to link the demand for greater choice with society's interest in equitable and high-quality education.

Choice and Accountability

The idea of choice in education and its relationship to standards and accountability is not new. While voucher advocates are quick to cite the work of Milton Friedman as the origin of the voucher idea, discussions about how to combine parental and societal prerogatives in education predate Friedman's work. The accountable choice model shares characteristics of many proposals, including the recent work of Paul Hill and earlier work by liberal voucher and equalization proponents Christopher Jencks and John Coons. But it is perhaps best articulated in John Stuart Mill's *On Liberty* published in 1859.[10]

Mill wrote that, "Is it not almost a self-evident axiom, that the State should require and compel the education, up to a certain standard, of every human being who is born its citizen?" He worried, however, that there were dangers if the state dominated this process and thought that parents should have broad sway over schooling so long as those "certain standards" are being met. Mill argued that, "The objections which are urged with reason against State

education, do not apply to the enforcement of education by the state, but to the state taking upon itself to direct that education; which is a totally different thing." He envisioned a system where schools operated by the state existed, "as one among many competing experiments carried on for the purpose of example and stimulus to keep the others up to a certain standard of excellence."

As for accountability, Mill saw no alterative to subject matter examinations that were confined to "facts and positive science exclusively." Mill recognized that some measurement of basic educational attainment was important for society just as policymakers do today. The entire standards movement of the past decade is premised on this idea.

Today, as a policy matter, the key question policymakers must answer is whether such accountability (which does involve student testing in every state) should be coercive or only informational. In an informational model, students are tested so that transparent and comparable information is available to parents and the community about school quality and learning. Parents then make enrollment decisions based on this information and presumably poorly performing schools would improve or go out of business as a result of these choices.[11] The primary shortcoming of the information model is its reliance on the market to sanction low-performing schools. Even in the face of chronic underperformance, with the informational model there is no governmental sanction for low-performing schools and parents are free to continue to choose bad schools as well as good ones.

In a more coercive model, a public or governmental entity uses the information on student performance to oversee schools and intervene, sanction, and ultimately close those with low-performance. This is the basic standards and accountability model many states are adopting and that is codified in the "No Child Left Behind Act" of 2001. The primary drawbacks of this system are two-fold. First, although it is not incompatible with choice, it makes no explicit provisions for parental preference.[12] Second, because of highly politicized educational policymaking, actually putting teeth in this model has proven difficult in practice.[13] As Sen. Evan Bayh (D-Ind.) told the *Los Angeles Times* during reauthorization of the "Elementary and Secondary Education Act" in 2001, "Everyone is for accountability until it actually gets put into place and applies to them."[14]

How It Should Work in Practice

Accountable choice requires marrying the coercive model to the informational approach in a way that bolsters both and alleviates their primary shortcomings. The governmental oversight of the coercive model, although intrusive, is necessary to ensure that the interests of society are represented in education. However, by coupling this approach with parental choice, the direct interest of parents in their children's education can be reconciled with society's indirect interest. Essentially, parents have a free range of schools to choose from so long as those schools are achieving educational results and meeting public purposes. Obviously, this approach also introduces a bottom-up or "market" accountability structure as well providing the added benefit of mitigating some of the problems with top-down only accountability.

To design a choice-accountability model, policymakers must address the complicated and contentious issues of how to allocate funding, ensure equal access, and measure accountability. In the past, voucher partisans have often been dismissive of these issues and voucher opponents have raised them as intractable obstacles to choice. Addressing each is possible and necessary to create the basic components of an accountable education marketplace.

Funding

A substantial shortcoming of existing voucher programs is their lack of funding. Students are generally given less than 100 percent of overall per-pupil expenditure (PPE) and this limits both their choice of schools and also the ability of new providers to enter the marketplace. In other words, their voucher is worth less than what the system makes available for students per-pupil in traditional

public schools. There are two primary reasons for this fiscal shortfall. First, as a political matter, voucher proponents have found it easier to sell smaller pilot programs than initiatives that take the full PPE because these are easier to fund and seemingly more innocuous.[15] In addition, the public and legislators are understandably skeptical of providing substantial amounts for vouchers without guarantees of basic accountability. Second, one argument animating much of the voucher movement is that public schools are tremendously inefficient and so many proponents believe that private schools can do more with less. The experience of many charter schools struggling with facilities and funding problems is evidence that this is not always the case and illustrates the large disparities in PPE.

To give parents real choices, full PPE, rather than some pro-rata share, must follow students. In addition, funding must be weighted to reflect factors such as poverty and disability. Federal, state, and local funding schemes take poverty and disability into account when allocating educational resources and an equitable choice system must do the same. The cost of delivering a quality education is not the same for all students and these differences can be quantified and incorporated into a choice-driven funding plan.

Such a funding scheme accomplishes two goals. It addresses the "supply side" problem of school choice by providing sufficient funding to make it feasible for new providers to enter the market. In the absence of adequate funding, voucher plans only move a few students around; they do not alter the fundamental characteristics of the education marketplace. Second, full and weighted per-pupil funding creates an additional incentive for schools to serve low-income students and those with special needs.[16]

To support such a system, the federal government, as well as state and local governments, must address two problems. First, they must dramatically increase their information technology systems to allow for more efficient allocations of educational funding to schools. For example, almost all schools receive some funding based on the previous year's enrollment.[17] A system designed to encourage meaningful choice and student movement must enable dollars to follow students more of a real-time basis than they do now. Federal, state, and local education agencies must upgrade their capacity to track students and allocate funding.[18]

Second, to drive real choice, states and school districts must lessen their reliance on a localized property tax base to fund education. Breaking the link between where students live and where they are able to go to school is critical for achieving equity in education. In practice, however, this cannot be done without first breaking the link between where children live and the funding for their schooling. Localized taxing to fund schools results in stark intrastate disparities that will unfairly hamper the purchasing power of some parents in an accountable choice model. Ironically, while most of the attention to school finance comes from liberals who are frequently choice opponents, it is choice proponents who must tackle this issue to create a robust education marketplace. Even with greater intrastate equity, disparities will persist and the federal government must continue to target educational resources to low-income students and communities.[19]

Finally, states and localities may wish to help fledgling schools get started through fiscal assistance for facilities or "incubators." One key role of governments in an accountable choice model is providing support to all schools to ensure a healthy educational "ecosystem."

Equal Access

There are two primary reasons that basic provisions about equal access for students must be included in an accountable choice model. The universal access nature of our public education system is one of its enduring strengths. The nation has committed itself to the ideal of providing every child, regardless of ability, race, religion, income, or disability, a basic elementary and secondary education at public expense. Clearly, in too many communities, particularly low-income communities, this goal is not being met because, while students are in school, they are not

learning. But in a heterogeneous and pluralistic society such as ours this shortfall is reason to redouble efforts to achieve it rather than weaken this guarantee.

Second, if existing public schools are to compete with other providers of education, the rules for competition must be the same. It is disingenuous and counterproductive to create two sets of rules for schools and would likely cause the "skimming" effect that voucher opponents rightly worry about. Even with weighted PPE formulas, in an environment where schools could seek to avoid challenging and high-need students there would be a natural incentive for schools to avoid difficult students. This is how competition works and it is appropriate for government to mitigate these effects to advance the public good. No schools should be spared the sharp edges of competition but the playing field must be level and transparent.

These rules are not overly burdensome nor are they numerous.[20] However, schools receiving public tuition monies should:

- Observe basic health, nondiscrimination, and civil rights protections;
- Meet legal obligations to students with disabilities[21];
- Accept all students on a first-come/first-served or "blind" basis;[22] and
- Not charge tuition or mandatory fees beyond the amount of public funding.

These basic measures ensure that parental choice means exactly that—the ability of parents to chose schools in the marketplace rather than vesting the power to choose in the hands of schools.[23]

Some voucher proponents will argue that a policy precluding selective admission harms the ability of schools to pursue a unique mission or educational philosophy.[24] This is not the case. Any school meeting the basic access and accountability requirements can compete for students based on its mission, pedagogy, or other characteristics. Some parents will naturally favor and reject various schools precisely because of mission, pedagogy, or educational focus. In this environment, parents and the marketplace will determine the viability of various schools, just as market adherents seek while ensuring that the public interest in education is protected.

Accountability

Accountability to a public body for meeting the aforementioned principle of equal access as well as academic performance goals is the crux of the accountable choice model. All 50 states are working to build accountability systems and while these mechanisms remain works in progress, they are the most effective way yet devised to measure student learning and hold schools responsible for learning gains.[25]

Because both parents and the public have an interest in measuring and ensuring student learning, the accountability regimes in each state should apply to all schools receiving public dollars for tuition. This creates common benchmarks and standards, and facilitates a transparent competitive environment. Responsibility for holding schools accountable for academic performance and equal access need not be limited to the entities traditionally entrusted with public education. As charter school laws across the country demonstrate, a variety of entities, including local and state education agencies, public universities, municipal governments, and public museums, can effectively monitor and hold schools accountable.[26] An accountable choice system should mimic this diffuse accountability structure but it is essential that low-performing schools are dealt with by their authorizers.

A major difference between the accountable choice model and a pure-market model is that under the former, academically inadequate schools are sanctioned regardless of consumer demand or governance.

In addition, accountability measures allow rigorous evaluation and research on educational options. It is ironic that many of those promoting unaccountable choice initiatives are also demanding better "evidence-based" decision-making in education. Evaluation, refinement, and improvement must be a continuous process in education but it requires thorough data collection.

Pro-voucher critics will argue that these politically derived rules have no place in the education marketplace because the free market doesn't require regulation. This is a fundamental misreading of how most markets work. The rules that govern marketplaces generally are derived through a deliberative or political process. Because of the importance of education it is entirely appropriate to organize the marketplace around basic principles to protect the public interest in high-quality elementary and secondary education. Coupling of bottom-up market pressures with the top-down standards in key academic subjects is the most promising strategy to drive mass-customization in public education. In this way, a parent's direct interest in her or his child's education is married with society's interest in an educated citizenry.

Anti-voucher critics fear the lack of control inherent in a marketplace. For example, they contend that in a more robust choice regime, fringe schools will spring up. They raise concerns about David Koresh schools or more recently "al Qaeda" schools. While some communities will have to deal with fringe groups seeking to open schools on a case-by-case basis, the dual accountability structure of parental choice and public oversight will largely marginalize this problem and there are models for barring those that teach hatred of particular groups from participating in and receiving public funds. And, as a practical matter, equal access provisions and the sunshine of public scrutiny will deter most fringe elements from seeking public funding in the first place.[27]

Finally, although it is based in part on testing to measure performance, an accountable choice model could also help alleviate the debate about standardized testing of students. Schools would be held accountable for academic progress (currently measured through standardized tests in all states) but free to choose their own curriculum, pedagogy, and emphasis. In such a system, parents seeking an emphasis on the arts and humanities, science and technology, or a rigorous liberal arts focus could seek out schools that meet their needs and approached testing in a way that they find acceptable. At the same time, academic progress could still be measured against established state and national benchmarks.

Why Both Sides Should Embrace Accountable Choice

An accountable choice model will not please either side of the voucher debate. Voucher opponents will reject the choice aspects of the proposal while voucher adherents will reject the access and accountability requirements. But there are compelling reasons for both sides to embrace the idea.

First, choice is coming. Americans like being able to choose from six long distance carriers, a dozen kinds of bottled water, and dozens of varieties of breakfast cereal. Americans like choice and customization in many walks of life and schools are no exception. Voucher opponents must now decide whether to continue to fight against all choice or fight for a progressive choice system. If they choose the former, they risk being marginalized and the legitimate issues they raise in this debate will not be heard.

Second, contrary to conservative mythology, the reason vouchers consistently fail in popular referendums is not church-state concerns or the teachers' unions. Like previous initiatives, the failures of voucher initiatives in California and Michigan in the fall of 2000 were the result of voter concerns about the cost of voucher programs, unfairness if schools accepting vouchers were not held to the same standards as other schools, and subsidizing the tuition for students already in private schools.[28] The removal of the constitutional question is not likely to sway many voters directly. Voucher proponents also blame these defeats on the funding that teachers' unions bring to anti-voucher campaigns. This belief ignores two important facts: other education referendums pass despite a mismatch in spending and recent voucher campaigns are increasingly well-financed anyway.[29] If voucher proponents are serious about expanding choice, they must embrace a choice scheme that includes real accountability to build public support.

Finally, small vouchers (either small in dollar amount or program size) help only a few youngsters, something both sides of the debate should be concerned about. The types of small voucher experiments currently underway are

untenable in the long term. There is a growing frustration in low-income and minority communities with the consistent underperformance of their schools but small, limited voucher programs are unable to help the vast majority of these children or drive real reform in other schools.

Conclusion

The *Zelman* decision can serve either as another milestone in a largely unproductive debate over school choice or as a catalyst for rethinking choice and accountability in public education. If proponents and opponents of vouchers choose the former then the phony war over vouchers will continue unabated and distract from key issues such as improving teacher quality, increasing equity in school finance, and implementing more effective instructional approaches. And, while small-scale voucher demonstration programs will continue, they will do little to change the largely urban educational arrangements that condemn millions of already disadvantaged American youngsters to limited life chances. If voucher combatants choose the latter—expanding choice with accountability while addressing other educational issues in concert—it could bring about long-overdue changes in American public education to better align our schools with the times we live in.

Andrew J. Rotherham is the director of PPI's 21st Century Schools Project.

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Endnotes

[1] Zelman, Superintendent of Public Instruction of Ohio, et al. v. Simmons-Harris et al. No. 00-1751. Argued February 20, 2002. Decided June 27, 2002. Considered together with Hanna Perkins School et al v. Simmons-Harris et al. (No. 00-1777) and Taylor et al. v. Simmons-Harris et al. (No. 00-1779).

[2] See, for example, Ted Kolderie, "Beyond Choice to New Public Schools," (Progressive Policy Institute, 1990); Kathleen Sylvester, "Common Standards, Diverse Schools: Renewing the Promise of Public Education in the District of Columbia," (Progressive Policy Institute, 1997); Bryan Hassel, "Charter Schools: A Success Story Begins to Emerge," (Progressive Policy Institute, 1999); Andrew J. Rotherham, "A Loss All Around," (Progressive Policy Institute, 2000); Paul T. Hill, "Charter School Districts," (Progressive Policy Institute, 2001). See also, "Counterpunching on School Vouchers," (The New Democrat, 1999) Author; Paul T. Hill, "Give Kids A Choice,"(*Blueprint*: Ideas for a New Century, 1999); Al From, "New Democrats' 10 Key Reforms for Revitalizing American Education," (*Blueprint*: Ideas for a New Century, 1999); "The Voucher Sideshow," (Democratic Leadership Council, 2000).

[3] For views on how competition has played out in practice see, Frederick M. Hess, Revolution at the Margins (Brookings Institution 2002); Frederick M. Hess and Patrick J. McGuinn, "Muffled by the din: The competitive noneffects of the Cleveland voucher program," (Teachers College Record, 104(4): 727-764, 2002); Carolyn M. Hoxby, "How School Choice Affects the Achievement of All Students" in Choice with Equity, Paul T. Hill, ed. (Hoover Institution Press, 2002); Carolyn M. Hoxby, "School Choice and Productivity (Could School Choice be the Tide that Lifts All Boats?)," (unpublished, available at: http://post.economics.harvard.edu/faculty/hoxby/papers.html).

[4] The research on whether the achievement of individual students receiving vouchers in public and private programs has improved is mixed but does, not surprisingly, indicate moderate improvements. Again, evidence of effects on other schools and students is limited and mixed. For a representative pro- and con- see the papers on vouchers on http://www.ksg.harvard.edu/pepg and the American Federation of Teachers vouchers homepage at http://www.aft.org/research/Vouchers/index.htm.

[5] For a discussion of the church-state history of education see Joseph P. Viteritti, Choosing Equality: School Choice, the Constitution, and Civil Society (Brookings Institution, 1999).

[6] See, for example, Mathew Miller, "A Bold Experiment to Fix City Schools," (The Atlantic Monthly, July 1999).

[7] 21st Century Schools Project Bulletin, October 2, 2001 (www.ppionline.org).

[8] See "Counterpunching on School Vouchers," (The New Democrat, May/June 1999).

[9] For a discussion of "Publicness," see for example, Paul T. Hill, "What is Public About Public Education," in A Primer

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on America's Schools, Terry M. Moe, ed. (Hoover Institution Press, 2001).

[10] For several views on vouchers and choice see Milton Friedman, Capitalism and Freedom (University of Chicago Press, 1962); John E. Chubb and Terry M. Moe, Politics, Markets, and America's Schools (Brookings Institution, 1990); Paul T. Hill, Choice with Equity (Hoover Institution Press, 2002); Christopher Jencks, Education Vouchers: A Report on Financing Education by Payments to Parents (Center for the Study of Public Policy, 1978); John E. Coons and Stephen D. Sugarman, Education by Choice: The Case for Family Control (University of California Press, 1978). For a discussion of contracting and charter districts see, Paul T. Hill, Lawrence C. Pierce, and James W. Guthrie, Reinventing Public Education: How Contracting Can Transform America's Schools (University of Chicago Press, 1997); Hill, "Charter School Districts" (Progressive Policy Institute, 2001); Hill, "Give Kids A Choice," Blueprint: Ideas for a New Century (Democratic Leadership Council, 1999). For a pro- and-con- debate see Jerome J. Hanus, Peter W. Cookson Jr., Choosing Schools: Vouchers and American Education (American University Press, 1996). Jencks' ideas where partially put into practice in the federal voucher demonstration program in Alum Rock, California during the early 1970s.

[11] For a brief exploration of this idea see, Chester E. Finn Jr., "Can state standards & market-based reforms be reconciled?" (The Gadfly, April 25, 2002, available at www.edexcellence.net). For a longer treatment see "The Marriage of Standards Based Reform and the Education Marketplace" by Chester E. Finn Jr., (Achieve, 1999). For a caution on hybrid market-accountability models see Frederick M. Hess, Revolution at the Margins, (Brookings Institution, 2002).

[12] No Child Left Behind Act builds on public school choice provisions for students in failing schools that were agreed to in 1999. For students in failing schools, these provisions are weak and often ineffectual in practice. See, for example, Richard D. Kahlenberg, "A County's Failing Policy," (*The Washington Post*, June 24, 2002). In addition, the new law also does little to address the supply side problem and the provisions that were included to help increase the supply of charter schools was not funded for FY02, the first year of the No Child Left Behind Act.

[13] For example, evaluations of Title I schools consistently show that very little state or district action is taken with regard to these schools if they are deemed in need of improvement. See, for example, High Standards for All Students: A Report from the National Assessment of Title I on Progress and Challenges Since the 1994 Reauthorization, (United States Department of Education, 2001). For one explanation of problems with top-down accountability see Terry M. Moe, "Politics, Control, and the Future of School Accountability," (unpublished paper prepared for Program on Education Policy and Governance, Harvard University, 2002, available at http://www.ksg.harvard.edu/pepg).

[14] Ronald Brownstein, "Belatedly, a Front Is Forming to Fight Education Legislation Schools," (*The Los Angles Times*, July 24, 2001).

[15] Generally both public and privately funded voucher programs share this characteristic despite evidence that low-income students are often more expensive to serve than more affluent students. Voucher opponents have fought these programs under the assumption that they are a "camel's nose under the tent" for larger voucher initiatives. However, they have frequently done so arguing that these vouchers are too small which is, of course, an argument against small vouchers rather than vouchers per se.

[16] This idea is not new; many early vouchers proposals included a compensatory component as an equalizing or equity tool. See in particular work by Christopher Jencks and John E. Coons. Because of the evidence that concentrated poverty impacts achievement, states and localities may also wish to augment funding for schools that serve a high-concentration of such students in addition to funding provided through a choice plan. Controlled choice to combat concentrations of poverty is also an option before policymakers. See Richard D. Kahlenberg, All Together Now, (Brookings Institution, 2000).

[17] Charter schools have most recently highlighted this problem but it is a challenge for other public school choice plans as well and for funding more generally.

[18] A modernized funding/tracking system would also help address technical problems such as addressing students who switch schools during the school year. In addition, transfers of funds for education among various entities are a problem now, particularly with regard to special education, Medicaid, and some juvenile justice issues. An increased reliance on technology would help address these and other problems.

[19] In *The Radical Center* (p. 147-156) Ted Halstead and Michael Lind argue that education should be funded nationally with revenue raised from a consumption tax and distributed on an individual basis to drive greater choice and equalize spending to address the concerns raised here. Halstead and Lind are correct in their indictment of the current reliance on localized property taxes and the resulting inequities; however, their solution, in addition to being politically impractical, focuses on equalizing spending rather than ensuring equity and skirts the issue of measuring performance and public accountability. In addition, choice and equity can be reconciled in advance of, or without, radically overhauling the current federal role of targeting funding to at-risk students and disadvantaged communities. Ted Halstead and Michael Lind, The Radical Center, (Doubleday, 2001).

[20] Studies of charter schools show that these regulations (which charter schools now must observe) are not a significant barrier to their operation. Instead charter operators cite issues such as capital and fiscal concerns, lack of planning time, resistance from school boards and school districts, and internal conflicts as far greater obstacles. See for example, the National Study of Charter Schools Fourth Year Report, (United States Department of Education, 2000) and prior reports. See also "Charter Schools in Action: Final Report," by Chester E. Finn Jr., Bruno V. Manno, Louann A. Bierlein, and Gregg Vanourek, (Hudson Institute, July 1997).

[21] Special education and the federal Individuals With Disabilities Education Act need reform and modernization for

better alignment with existing choice options such as charter schools and also to address problems including over-identification of students (particularly minority students), lack of performance, and an overly burdensome regulatory system. Congress is currently deliberating these changes. Regardless, however, the rights of students with disabilities must be protected in a choice system because in a competitive environment there is an incentive to avoid these students. It is also possible, based on early experience with charter schools, that a niche market will emerge to serve students with special needs. For information on special education and charter schools see, Elizabeth Giovannetti, Eileen Ahearn, and Cheryl Lange, Charter Schools and the Education of Children with Disabilities, (Charter Friends National Network, 2001); Paul T. O'Neill, Richard Wenning, and Giovannetti, Serving Students With Disabilities In Charter Schools: Legal Obligations and Policy Options, (Charter Friends National Network, 2002). For more on special education reform generally, see Chester E. Finn, Jr., Andrew J. Rotherham, and Charles R. Hokanson, Jr., Rethinking Special Education For A New Century, (Thomas B. Fordham Foundation and Progressive Policy Institute, 2001).

[22] Such a policy could include exceptions for sibling attendance, geographic location, or even particular aptitudes as public schools, particularly magnet schools, do now without violating the spirit of equal access for all students. In addition, as a transition issue, students should not be displaced from their current schools as a result of a new policy. Random admissions should occur as seats become open.

[23] These provisions would also help create real choices for low-income students beyond only those in their immediate neighborhoods. This will also require a greater willingness at the state and local level to use interdistrict choice models as well. It's worth noting that while education options are available for poor students within their communities, more affluent communities have generally not opted to participate in choice plans.

[24] There is an irony to voucher proponents making this argument because they also frequently cite the success that urban Catholic schools have with a diverse and often challenging student body as evidence of why choice is a benefit. If these schools are indeed succeeding with challenging students, as the evidence largely indicates they are, then precluding them from discriminating against such students should not be problematic.

[25] For more on accountability systems and their potential, limitations, and current applications see Brookings Papers on Education Policy 2002, Diane Ravitch, ed. (Brookings Institution Press, 2002); the Education Commission of the States website at www.ecs.org; and a recent and excellent set of papers prepared a conference sponsored by the Program on Education Policy and Governance at the Kennedy School of Government, Harvard University at http://www.ksg.harvard.edu/pepg.

[26] The No Child Left Behind Act of 2001 requires common performance goals from all schools including charter schools. As this policy is implemented it will provide both models and useful cautions for policymakers.

[27] Some conservatives are concerned that vouchers will carry regulatory requirements such as those described here and thus support tax credits as a preferred alternative to avoid this. See, for example, Andrew J. Coulson "Toward Market Education: Are Vouchers or Tax Credits the Better Path?" (Cato Institute, 2001); Ronald L. Trowbridge "Devil's Deal." (National Review, 15 Sept. 1997: 56-60).

[28] For what regulation the public wishes to see in a voucher program as well as an excellent analysis of public opinion relating to vouchers see Terry M. Moe, Schools, Vouchers, and the American Public (Brookings Institution, 2001).

[29] For example Proposition 227 dealing with bilingual education in California, commonly known as the "Unz Initiative," passed despite being outspent by opponents. In the past several years pro-voucher campaigns such as the Children's Scholarship Fund and Black Alliance for Education Options have invested heavily in public relations campaigns related to school choice. In California in 2000, venture capitalist Timothy Draper spent more than $23 million of his own money on Proposition 38, a voucher initiative on the ballot there, and as a result proponents of the measure outspent opponents. In Michigan Amway executive Dick DeVos helped finance the 2000 voucher referendum, which was means-tested for low-income parents, and it also failed despite outspending its opposition. While teachers' unions continue to devote substantial resources to fighting vouchers this is not the primary reason for the consistent defeat of statewide voucher referendums. The lopsided margins by which these referendums were defeated and the consistency of the defeats speak to larger public concerns.

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